



## 1997 SENATE BILL 151

April 9, 1997 - Introduced by Senators WEEDEN and WINEKE, cosponsored by Representatives AINSWORTH and WOOD. Referred to Committee on Judiciary, Campaign Finance Reform and Consumer Affairs.

- 1     **AN ACT** *to renumber and amend* 767.32 (1r); and *to create* 767.32 (1r) (b) of  
2     the statutes; **relating to:** granting credit against child or family support.

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### *Analysis by the Legislative Reference Bureau*

Under current law, in an action to revise a judgment or order with respect to child or family support the court may not give credit to the payer against support that was due prior to the commencement of the revision action for payments that were made on behalf of the child in a manner other than to the clerk of court or as otherwise provided by the court. This bill authorizes the court to grant credit against support that was due prior to the action for payments made under certain circumstances. Those circumstances are any of the following: that the parties transferred physical placement of the child without court approval and the payer directly provided for the support of the child; that the parties agree to the credit; or, if the parties do not agree to the credit, that the court finds that the payments were made in substantial compliance with the spirit and intent of the judgment or order, that the payments were made not more than 2 years before the commencement of the action, that the payee expressly or impliedly consented to the payments as an alternative to the payer's support obligation, that the payments were not made as gifts, that the credit would not do an injustice to the child or the payee and that service was made on the child support program designee in the county if the support is assigned to the state because of benefits received by or on behalf of the child.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

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## SECTION 1

1 Section 1. 767.32 (1r) of the statutes is renumbered 767.32 (1r) (a) and amended  
2 to read:

3 767.32 (1r) (a) ~~In~~ Except as provided in par. (b), in an action under sub. (1) to  
4 revise a judgment or order with respect to child support or family support, the court  
5 may not grant credit to the payer against support due prior to the date on which the  
6 action is commenced for payments made by the payer on behalf of the child other than  
7 payments made to the clerk of court or support collection designee under s. 767.265  
8 or 767.29 or as otherwise ordered by the court.

9 **SECTION 2.** 767.32 (1r) (b) of the statutes is created to read:

10 767.32 (1r) (b) The court may grant credit to the payer against child or family  
11 support due prior to the date on which the action is commenced for payments made  
12 by the payer on behalf of the child other than payments made to the clerk of court  
13 or support collection designee under s. 767.265 or 767.29 or as otherwise ordered by  
14 the court if the parties to the action agree to the credit, the parties transferred the  
15 child's primary physical placement to the payer without court approval under s.  
16 767.329 and the payer has directly provided for the support of the child or, although  
17 the parties do not agree to the credit, the court finds by clear and convincing evidence  
18 all of the following:

19 1. That the payments were made in substantial compliance with the spirit and  
20 intent of the order or judgment for support.

21 2. That the payments were made not more than 2 years before the  
22 commencement of the action under sub. (1).

23 3. That the payee either expressly or impliedly consented to accept the  
24 payments as an alternative to the payer's obligation to pay child or family support  
25 or that the payments were made under compulsion of circumstances.

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1           4. That the payments were not made as gifts or similar voluntary payments or  
2 expenditures.

3           5. That the credit would not do an injustice to either the payee or the child.

4           6. That the child support program designee under s. 59.53 (5) of the county in  
5 which the action is commenced has been served if the child's right to support is  
6 assigned to the state under s. 48.57 (3m) (b) 2. or 49.19 (4) (h) 1. b.

7           **SECTION 3. Initial applicability.**

8           (1) This act first applies to arrearages existing and child or family support  
9 payments past due on the effective date of this subsection regardless of when the  
10 judgment or order under which the arrearages accrued or the child or family support  
11 is owed was entered.

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(END)